

MARITIME SAFETY ACT OF 1983

NOVEMBER 10, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES OF NORTH CAROLINA, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 3486]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3486) to promote maritime safety on the high seas and navigable waters of the United States, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

That this Act may be cited as the "Maritime Safety Act of 1983"

SEC. 2. (a) Section 3309 of title 46, United States Code, is amended by adding at the end:

"(c) At least 30 days (but not more than 60 days) before the current certificate of inspection issued to a vessel under subsection (a) of this section expires, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall submit to the Secretary in writing a notice that the vessel—

"(1) will be required to be inspected; or

"(2) will not be operated so as to require an inspection."

(b) Section 3311 of title 46, United States Code, is amended by—

(1) inserting "(a)" before "A vessel";

(2) striking the word "valid"; and

(3) inserting at the end the following:

"(b) The Secretary may direct the owner, charterer, managing operator, agent, master, or individual in charge of a vessel subject to inspection under this chapter not having a certificate of inspection—

"(1) to have the vessel proceed to mooring and remain there until a certificate of inspection is issued; or

"(2) to take immediate steps necessary for the safety of the vessel, individuals on board the vessel, or the environment."

(c) Section 3318 of title 46, United States code, is amended as follows:

"(1) Subsection (a) is amended by—

(A) striking "The" the first time it appears and substituting "Except as otherwise provided in this part, the" and

(B) striking "\$1,000, except that when the violation involves operation of a barge, the penalty is \$500," and substituting "not more than \$5,000."

(2) Subsection (c) is amended by striking "\$2,000," and substituting "\$5,000,".

(3) Subsection (d) is amended by striking "\$2,000," and substituting "\$5,000,".

(4) Subsection (e) is amended by striking "\$2,000," and substituting "\$10,000,".

(5) Subsection (f) is amended by striking "\$5,000," and substituting "\$10,000,".

(6) Subsection (g) is amended by striking "shall be fined not more than \$10,000, imprisoned for not more than one year, or both," and substituting "is liable to the Government for a civil penalty of not more than \$5,000,"

(7) Subsection (h) is amended by striking "United States Government for a civil penalty of not more than \$500." and substituting "Government for a civil penalty of not more than \$1,000."

(8) At the end add the following:

"(i) A person violating section 3309(c) of this title is liable to the Government for a civil penalty of not more than \$1,000.

"(j)(1) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel required to be inspected under this chapter operating the vessel without the certificate of inspection is liable to the Government for a civil penalty of not more than \$10,000 for each day during which the violation occurs, except when the violation involves operation of a vessel of less than 1,600 gross tons, the penalty is not more than \$2,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

"(2) A person is not liable for a penalty under this subsection if—

"(A) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has notified the Secretary under Section 3309(c) of this title;

"(B) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has complied with all other directions and requirements for obtaining an inspection under this part; and

"(C) The Secretary believes that unforeseen circumstances exist so that it is not feasible to conduct a scheduled inspection before the expiration of the certificate of inspection.

"(k) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to comply with a direction issued by the Secretary under section 3311(b) of this title is liable to the Government for a civil penalty of not more than \$10,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

"(l) A person committing an act described in subsections (b)–(f) of this section is liable to the Government for a civil penalty of not more than \$5,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty."

SEC. 3. (a) Chapter 23 of title 46, United States Code, is amended as follows:

(1) At the end of the chapter analysis, add the following:

"§ 2306. Vessel reporting requirements"

(2) In section 2301, strike "This chapter" and substitute "Except as provided in section 2306 of this title, this chapter".

(3) Add at the end the following:

"2306. Vessel reporting requirements

"(a)(1) An owner, charterer, managing operator, or agent of a vessel of the United States having reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled immediately shall use all available means to determine the status of the vessel and notify the Coast Guard.

"(2) When more than 48 hours have passed since the owner, charterer, managing operator, or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System under authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), received a communication from the vessel, the owner, charterer, managing operator, or agent immediately shall use all available means to determine the status of the vessel and notify the Coast Guard.

"(3) A person notifying the Coast Guard under paragraph (1) or (2) of this subsection shall provide the name and identification number of the vessel, the names of individuals on board, and other information that may be requested by the Coast Guard. The owner, charterer, managing operator, or agent also shall submit written confirmation to the Coast Guard within 24 hours after nonwritten notification to the Coast Guard under those paragraphs.

"(4) An owner, charterer, managing operator, or agent violating this subsection is liable to the United States Government for a civil penalty of not more than \$5,000 for each day during which the violation occurs.

"(b)(1) The master of a vessel of the United States required to report to the System shall report to the owner, charterer, managing operator, or agent at least once every 48 hours.

"(2) A master violating this subsection is liable to the Government for a civil penalty of not more than \$1,000 for each day during which the violation occurs.

"(c) The Secretary may prescribe regulations to carry out this section."

(b)(1) Section 6101 of title 46, United States Code, is amended—

(A) in subsection (a), by striking "and incidents"; and

(B) by striking subsection (c).

(2) Section 6103 of title 46, United States Code, is amended by striking "or incident".

SEC. 4. (a) Subsection (b) of Section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183(b)) is amended by striking out "\$60" each place it appears and inserting in lieu thereof "\$420"

(b) The amendment made by subsection (a) shall apply to incidents occurring after the date of enactment of this Act.

SEC. 5. Sections 2(a) and 3 of this Act are effective 180 days after the date of enactment of this Act.

PURPOSE

The purpose of H.R. 3486, as reported, is to promote maritime safety by increasing civil penalties for violations of marine inspection laws and regulations, and by establishing vessel reporting requirements which will increase the likelihood that timely assistance will be available to vessels in distress. The bill will also increase the limitation on shipowner liability with respect to marine casualties where personal injury or loss of life is involved.

BACKGROUND

This legislation was developed in response to several recent maritime disasters.

In October of 1980, the SS *Poet*, a 13,000 gross ton U.S.-flag freight vessel carrying 34 crewmen and a cargo of corn, disappeared without a trace while en route to Egypt. The Merchant Marine and Fisheries Committee responded to this tragedy by ordering a staff investigation and by conducting oversight hearings on April 9 and June 24, 1981.

During these hearings, the Committee learned that the owner of the SS *Poet* waited ten days after last communicating with his vessel to notify the Coast Guard that his ship was missing, which severely limited any opportunity for a successful search. Several witnesses testified, however, that a communication gap between the owner and vessel does not necessarily alarm the owner or operator because radio communications, unlike satellite systems, are often not able to overcome atmospheric interference. Several Committee members expressed their dissatisfaction with infrequent communications between the vessels, owners, and the Coast Guard and with the poor quality of radio communications in general.

The oversight hearings and staff investigation of the SS *Poet's* disappearance culminated in an oversight report issued in September of 1982 (Serial No. 97-E). That report recommended, among other things, that:

Legislation should be enacted to clarify the responsibility for reporting the probable loss of a vessel by more clearly defining the criteria a shipowner should use to determine a vessel's probable loss and by including a time limitation within which a report of probable loss must be made to the Coast Guard;

The owner/operator of any vessel participating in AMVER be required to promptly report to the Coast Guard any irregularities in scheduled communications with the ship; and

Congress should examine the limitation of liability law and make appropriate changes to bring it more nearly into conformity with proposed international conventions.

On February 14, 1982, 84 officers and crew died following the capsizing of the mobile offshore drilling unit *Ocean Ranger* in frigid waters off the coast of eastern Canada. The Committee conducted a hearing concerning this tragedy on March 9, 1982. During that hearing, Committee Members were disturbed by the fact that the *Ocean Ranger* had been operating with an expired certificate of inspection, that the Coast Guard had not been notified in advance of the expiration of that inspection certificate, and that the legal penalty for operating a vessel without a valid certificate was only \$500. The operator of the *Ocean Ranger* testified that it was economically unfeasible for the company to stop drilling in order to have its vessel inspected. Because the leasing fee for the *Ocean Ranger* Modu was \$100,000 per day, he testified that it should be self-evident that a \$500 fine for operating with an expired certificate of inspection was not going to deter the company from drilling. (Serial No. 97-33: *Ocean Ranger* hearing.)

In response to these incidents, Representative Walter B. Jones introduced H.R. 7038 on August 19, 1982. That legislation provided for substantial increases in civil penalties for violations of marine inspection laws, including the penalty for operating a vessel without a valid inspection certificate. The bill also sought to require the master of a U.S.-flag vessel engaged in foreign commerce to report at 48-hour intervals to the owner of the vessel; authorized funds for the installation of maritime satellite communications equipment on certain vessels; and expanded the ability of the Coast Guard to take action against the federal license of a marine officer involved in an accident while operating under a state license.

Following the introduction of H.R. 7038, Committee staff solicited the comments and recommendations of all segments of the maritime community. The shipowners' comments basically agreed with increasing the civil penalties, but not to the extent of H.R. 7038. They also expressed doubt that a notice to the Coast Guard about a due inspection, or about a vessel which had not reported within 48 hours, was of any consequence. The shipowners supported expanded jurisdiction of the Coast Guard over negligent actions by licenses officers. Certain State Pilot Associations opposed the provi-

sion in the bill which would allow the Coast Guard to investigate marine accidents involving federally licensed pilots who were operating under their state pilot's license at the time of the accident. The State Pilot Associations recommended, instead that state governments retain essentially sole jurisdiction over the investigation and subsequent disciplinary action of cases involving state pilots. The Radio Officers Union (ROU) was opposed to the provision in H.R. 7038 which authorized funding for satellite systems. The ROU stated that the present 500 kHz distress system is more reliable than current satellite systems. The ROU suggested that Congress wait until the International Maritime Organization's (IMO) Future Global Maritime Distress and Safety System was in effect before "subsidizing" installation of present satellite systems on vessels. The inland waterway interest groups expressed serious concern with the size of the civil penalties, which could be assessed against the barge industry. The barge interests argued that the Committee had focused on oceangoing vessels, and there had been no findings of problems with the inland waterway operators.

During this informal comment period, the second session of the 97th Congress ended and H.R. 7038 lapsed. However the comments received were taken into consideration when revising the legislation, which was reintroduced as H.R. 3486 in the 98th Congress.

COMMITTEE ACTION

H.R. 3486 was introduced on June 30, 1983, by Representative Walter B. Jones of North Carolina. The Subcommittee on Coast Guard and Navigation held a set of four hearings in order to consider H.R. 3486 and to generally review the Marine Safety Program of the Coast Guard (July 19 and 27; August 2; and September 29).

These hearings were intended to respond to a variety of marine safety-related issues, but were stimulated, in particular, by a third maritime tragedy, the sinking of the collier *Marine Electric* off the mid-Atlantic coast on February 12, 1983. That disaster—which took the lives of 31 of the 34 crewmen aboard—raised numerous questions concerning the competence of safety inspections conducted by the Coast Guard and the American Bureau of Shipping, about the overall safety of America's aging merchant fleet, and about the adequacy of lifeboats and other survival equipment on board merchant vessels.

Among the witnesses testifying at these hearings were: Admiral James S. Gracey, Commandant, U.S. Coast Guard, accompanied by Rear Admiral Clyde T. Lusk, Chief, Office of Merchant Marine Safety of the U.S. Coast Guard; Admiral Harold E. Shear, Administrator, Maritime Administration; Admiral G. H. Patrick Bursley, National Transportation Safety Board; and Mr. Robert McIntyre, Federal Communications Commission. Also testifying were representatives of the following organizations: American Bureau of Shipping (ABS); American Institute for Merchant Shipping (AIMS); American Pilots Association (APA); International Association of Drilling Contractors (IADC); National Ocean Industries Association (NOIA); Offshore Marine Service Association (OMSA); National Marine Engineers' Beneficial Association (MEBA); Seafarers International Union (SIU); Communications Satellite Corporation

(COMSAT); Radio Officers Union (ROU); AFL-CIO Maritime Committee; National Maritime Union of America (NMU); Marine Transport Lines, Inc. (MTL); Pacific Seafood Processors Association; National Federation of Fishermen; Working Sail, Inc.; Mobile Marine Radio; and the U.S. Navy Search and Rescue Program. Also presenting testimony were Mrs. Liselotte Zukier Fredette, Mr. Eugene Kelly and Mr. Richard Hiscock.

Admiral Gracey expressed support for section 2(a) of H.R. 3486, stating that a 60-day notification requirement would serve to increase the communication between shipowners and the Coast Guard with respect to setting up vessel inspections. This would better allow both parties to work out the logistics involved in deciding when and where the most convenient inspection arrangements could be made. Admiral Gracey maintained that the 60-day notification would be particularly useful for scheduling inspection of vessels in foreign locations. He did not strongly object to a proposal to change the 60 days to 30 days.

Several other witnesses also supported the notification requirement, including The National Transportation Safety Board, ABS, AIMS, IADC, APA, SIU, NMU, AFL-CIO Maritime Committee, and MEBA. the maritime unions stated that, although the notification requirement would be helpful in insuring timely vessel inspections, it would not address the serious problem of inadequately trained an inexperienced Coast Guard inspectors.

Regarding the penalty amounts in Section 2, Admiral Gracey pointed out that the Coast Guard considers inspection violations to be serious infractions and that the associated penalties should be increased from current levels. Specifically, he supported the Section 2(b)(1) provision which authorizes the Coast Guard to assess a \$10,000 per day penalty for operating a vessel without a certificate of inspection. He stressed that \$10,000 would be considered as an "upper limit" only to be used against extremely flagrant violators. He also supported increasing inspection violation penalties to \$5,000 per day as provided in Section 2 of H.R. 3486.

The National Ocean Industries Association, represented by Mr. John Bissell, expressed general opposition to the inspection penalty levels, asserting that they would be too high for small vessel operators, especially offshore service vessels. NOIA proposed a two-tier arrangement whereby vessels of less than 1,600 gross tons would be assessed a penalty of \$500 per day and all others \$1,000 per day. It was stated that this would provide a significant increase in liability over the current penalty levels because of the change from a penalty being assessed for "each offense" to "each day in which the violation occurs." It was also stated that the penalty levels in the bill would pose a confiscatory threat to small vessel operators. In support of this, Mr. Bissell noted that offshore vessels rent for about \$1,500 per day.

NOIA expressed a fear that owners of vessels operating in foreign localities for long periods of time may be exposed to tremendous inspection penalties inasmuch as they are not always able to secure timely inspection of these vessels. It was recommended that an extension of certificate provision be included in the bill to protect owners who may be forced to operate without a certificate through no fault of their own. Admiral Gracey responded to this by

asserting that an extension provision is not necessary and that the Coast Guard is prepared to carry out all necessary inspections world-wide. He did concede that it is sometimes logistically difficult to arrange for timely inspections and that the Coast Guard does not have the resources to run the program as efficiently as it would like.

Admiral Benkert of AIMS stated that operating a vessel without a certificate of inspection should be considered as a serious violation and should result in "a very stringent penalty." On the other hand, he was concerned that the \$5,000 per day inspection violation penalty could be inordinately severe if it were strictly applied to the less serious inspection violations.

Section 3(a) of H.R. 3486, which imposes specific emergency notification requirements upon masters and owners of vessels, was not opposed by any of the witnesses. Regarding the 48 hour reporting requirement, the Coast Guard responded that the associated penalty provision relating to the master would be difficult to assess because we would not know what conditions at sea would legitimately excuse the master from reporting. Admiral Gracey also expressed concern that the 48 hour reporting requirement could result in diversion of Coast Guard resources. In situations where a vessel does not report within a 48 hour period, Admiral Gracey recommended that the owner should be required to make a reasonable effort to contact the vessel prior to notifying the Coast Guard. This, in his estimation, would reduce the number of "false uncertainty phases" initiated by Coast Guard search and rescue personnel. During questioning, Admiral Gracey stated that the statutory responsibility, obligations, or liabilities of the Coast Guard would not be changed by this bill.

Admiral Bursley noted that the National Transportation Safety Board's Marine Accident Report on the disappearance of the SS *Poet* recommended that reporting requirements for U.S.-flag merchant vessels be changed so that the Coast Guard would be notified when a vessel fails to report each 48 hours. He also recommended that certain vessels on domestic voyages be included in a mandatory vessel reporting system.

Although Mr. Frank Pecquex of the SIU registered support for the 48 hour reporting requirement, he was concerned that the provision "may be insufficient unless it is coupled with a Coast Guard review of its search and rescue procedures." It was noted that, in the case of the SS *Poet*, the Coast Guard waited several days after being notified by the company before a search and rescue operation was carried out.

With regard to the issue of limitation of liability laws, Mrs. Liselotte Fredette testified that the current limit on the liability of a vessel owner for payments involving loss of life or bodily injury in cases not involving owner negligence provides inadequate compensation. In support of this, she stated that families of single seamen lost on the SS *Poet* received settlements from the owner ranging between \$5,000 and \$48,000.

Tal Simpkins of the AFL-CIO Maritime Committee testified he would be in favor of increasing the present limitation.

Henry Howell, attorney from Virginia, testified that the petition for limitation of liability is not longer needed. He stated the peti-

tion is really for the underwriters, and if it was done away with, the shipowners would probably be more careful in the maintenance of their vessels.

Admiral Benkert (AIMS) and Admiral Shear (MARAD) did not believe that shipowners would be more careful if the limits on liability were raised. They believed responsible shipowners were not affected by limitation of liability laws.

The hearings provided a forum for the discussion of a large number of marine safety issues which are not encompassed by the provisions of H.R. 3486. This discussion produced a series of recommendations which Members of the Subcommittee on Coast Guard and Navigation felt would contribute to marine safety, but which can be implemented without statutory change.

On October 6, accordingly, Coast Guard and Navigation Subcommittee Members joined in sending a letter to Admiral Gracey recommending that the Coast Guard take the following actions:

1. Issue proposed regulations to require all U.S. cargo vessels required to have lifeboats, within 3 years of the effective date of the regulations, to be equipped with lifeboat launching davits which are arranged to allow the lifeboat to be boarded and launched directly from the stowed position;

2. Issue proposed regulations to require all U.S. cargo vessels required to have lifeboats, within 3 years of the effective date of the regulations, to be equipped with self-contained, completely enclosed lifeboats;

3. Proceed with present plans to require that an additional EPIRB be carried on each side of all vessels subject to the Safety of Life at Sea Convention, in a position where the EPIRB may be readily placed in any lifeboat or life raft;

4. Arrange to send Coast Guard personnel for training in the rescue swimmer program administered by the U.S. Navy, or make other provisions to guarantee that Coast Guard personnel are trained in rescue swimming;

5. Review its policy governing the granting of extensions of drydock inspections for vessels. Vessels which have had a history of safety problems should not be granted extensions, except when shipyard space to carry out the drydock inspection is unavailable;

6. Proceed with efforts to evaluate the merits of improved lifesaving equipment suitable for use on passenger ferries; and,

7. Accelerate present efforts to recruit a limited number of experienced civilian personnel to participate in the Coast Guard's marine inspection program.

The letter noted that rulemaking proposals should offer a full opportunity for public comment, in order that the economic and safety implications of these initiatives may be balanced and completely explored.

SUBCOMMITTEE MARKUP

On October 6, 1983, the Subcommittee on Coast Guard and Navigation met jointly with the Subcommittee on Merchant Marine and approved H.R. 3486, as amended, by a unanimous voice vote.

The markup began with the Coast Guard and Navigation Subcommittee Chairman, Walter B. Jones, offering an amendment in the nature of a substitute to H.R. 3486. The substitute was offered to conform the bill to Public Law 98-89, a recently enacted statute which re-organizes and updates the marine safety laws of the United States in title 46, United States Code. The substitute also reflects changes made in response to the testimony received at the four marine safety hearings and at additional meetings which were held with the Coast Guard and with representatives from a variety of maritime-related industries and organizations. Major changes included in the substitute were: (1) a modification of the penalty section in order to establish a more uniform and equitable set of penalties for violations of marine safety laws, (2) elimination of a provision authorizing \$10 million to subsidize the purchase and installation of marine satellite communications systems on certain U.S. vessels; and, (3) elimination of a provision to permit the Coast Guard to take action against a federal pilot's license as the result of that pilot's actions while operating under the license of a state.

Specifically, the substitute included a "two-tier" system for penalties assessed for operating a vessel without a valid certificate of inspection. The \$10,000 per day maximum penalty was retained for all vessels except those of less than 1,600 gross tons, for which a \$2,000 per day maximum penalty was proposed. According to the sponsor of the substitute, the proposed lower penalty for vessels of less than 1,600 gross tons was warranted because of the nature of relatively small scale operations, and the fact that H.R. 3486 was originally prompted by problems which had occurred with far larger vessels at sea.

The substitute also modified the provision in H.R. 3486 establishing penalties for the violation of an inspection regulation. The maximum penalty in the original bill was \$5,000 "for each day in violation." The substitute reduces the penalty to a flat \$5,000 maximum. This change was proposed in response to the observation made by several witnesses at the hearings that a \$5,000 per day penalty for violating an inspection regulation would be excessive. The flat \$5,000 penalty was intended to alleviate the concern that a vessel owner might be exposed to an enormous liability for having violated a relatively minor regulation over a period of time.

The provision authorizing federal funds to assist in the purchase of satellite communications equipment for certain vessels was deleted in the substitute because of the view that this action might be premature. The International Maritime Organization (IMO) is presently engaged in negotiations to develop a Comprehensive Future Global Maritime Satellite System, which may be ready for operation by 1990. The pace of progress in the communications field is such that providing subsidies for the purchase of particular equipment might at the present time prove neither necessary nor cost-effective.

The substitute deleted Section 4 of H.R. 3486, a provision which would have permitted the Coast Guard to take action against the federal license of a pilot as the result of actions which that pilot had taken while operating under the license of a state. This deletion reflected the view of many Subcommittee members that there

was a need to develop a more complete hearing record prior to taking action in this area.

The Subcommittee unanimously approved two amendments to the substitute. One of these amendments was technical, while the other amended Section 2(c)(8) to provide the Coast Guard with the flexibility to exempt the owner of a vessel from the penalty for operating without a valid certificate of inspection when unforeseen circumstances make it unfeasible to conduct a scheduled inspection before the certificate expires.

A third amendment was proposed to increase the limit on the liability of the owner of a seagoing vessel for payment involving loss of life or bodily injury in cases not involving the negligence of the owner (46 U.S.C. App. Subsection 183(b)). The amendment called for an increase in the liability figure from \$60 to \$420 per ton of the vessel, to reflect the increase which has occurred in the cost of living since the \$60 figure was put into law in 1936. There was general agreement among Subcommittee members that the present liability figure is far too low, but uncertainty about the proper level to which it should be increased. Concerns were expressed, in addition, with respect to the need to gather the recommendations of outside experts and representatives of the affected maritime industries prior to approving such a change. Following the discussion, the amendment was withdrawn pending consideration of H.R. 3486 by the full Committee.

The Subcommittee then approved the substitute, as amended, and reported it to the full Committee.

FULL COMMITTEE MARKUP

The full Committee approved H.R. 3486, with three amendments, on November 1.

During the markup, the Committee adopted an amendment to increase the limit on the liability of the owner of a seagoing vessel for payments involving loss of life or bodily injury in cases not involving the negligence of the owner. The proposed increase—from \$60 to \$420 per ton of the vessel—reflects the increase in the cost of living between 1983 and 1936, when the \$60 limit became a part of U.S. law.

The sponsor of the amendment argued that the change would restore at least some meaning and equity to a liability statute that was clearly outdated, and which had been subjected to criticism from federal judges, and from those involved in the maritime industry, for many years. It was pointed out that international standards in this area are far higher than the present U.S. standard, and that the characteristics of marine insurance are such that the change will have little or no effect on insurance costs to shipping companies operating in U.S. waters.

The amendment was described both by the sponsor and by other Members of the Committee as an interim proposal, to be followed immediately by a thorough review of maritime liability laws by the Subcommittee on Merchant Marine. The amendment was intended to spur action on a more comprehensive proposal, and guarantee that at least some improvement in the present law would occur even if a more comprehensive bill is not quickly approved.

After considerable discussion, the amendment was approved by a unanimous voice vote.

The Committee then approved a minor technical amendment, as well as an amendment to establish an effective date for sections 2(a) and 3 of the bill of 180 days following the date of enactment. Section 2(a) requires the owner of a vessel to notify the Coast Guard 30 to 60 days prior to the expiration of the vessel's certificate of inspection. The delay in the effective date will permit the Coast Guard, in consultation with vessel owners, to develop procedures for implementing this provision in a mutually convenient and efficient manner. Unless both the Coast Guard and the affected shipowners decide other arrangements would be preferable, the Committee expects that the notifications will be submitted to centralized locations such as a Marine Safety Office, Captain of the Port Office, or a district or Coast Guard headquarters where centralized record keeping is maintained, rather than to various Coast Guard offices around the country. With the advent of the computerized Marine Safety Information System, any information regarding a vessel received at any one of these locations would automatically update that vessel's file and be available to all safety and inspection offices Coast Guard-wide. Thus, a vessel owner could conveniently give the required notice to the Coast Guard at any of these offices without regard to the location of the vessel at the time the notice is due. This is consistent with the concept that the purpose of the notice is to begin a dialogue between the vessel owner and the Coast Guard regarding the need and arrangements for an inspection. Thus, specific details regarding the inspection need not be agreed upon at the time notice is given by the owner.

Following consideration of the amendments, H.R. 3486 was approved and ordered reported to the House by a unanimous voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 1: TITLE

The Act is cited as the "Maritime Safety Act of 1983".

SECTION 2: NOTICE REQUIREMENT AND INCREASED PENALTY AMOUNTS FOR INSPECTION VIOLATIONS

Section 2 establishes a notice requirement regarding inspections for certification and also amends the maximum civil and criminal penalty amounts for inspection and safety law violations.

Section 2(a) amends 46 U.S.C. section 3309 to require that at least 30 days, but not more than 60 days, before a certificate of inspection issued under 46 U.S.C. 3309(a) expires, the vessel owner, or other specified person, must notify the Secretary in writing that the vessel is due for inspection. If the vessel is not going to be operating so as to require an inspection, the vessel owner is required to notify the Secretary in writing of that fact. This written notification does not include any requirement that an inspection actually be scheduled at that time or that the vessel owner indicate where the vessel will be located on the date of expiration. The purpose of section 2(a) is to assure that the shipowner and the Coast Guard

know when the inspection is due and that there will be enough advance time to prepare for the inspection. This section is not intended to preclude or limit any communications between the Coast Guard and a vessel owner with respect to inspection requirements. Establishment of this notification requirement does not prevent an owner from contacting the Coast Guard informally at an earlier date, in addition to the legally required notification. (See also the discussion in full committee markup part of this report.)

Section 2(b) amends section 3311 to authorize the Secretary to order a vessel, without a valid certificate of inspection, to proceed to mooring and remain until a certificate is issued or to take whatever immediate steps are necessary for safety. This authority is needed to stop a vessel from operating without a valid certificate of inspection and to do whatever is necessary to assure that the safety of the vessel, those on board, or the environment is not jeopardized. A violation of an order under this provision is subject to civil penalty of not more than \$10,000 per day, and the vessel is liable in rem, under section 2(c)(8) of H.R. 3486.

Section 2(c) amends penalty amounts for violations of inspection and safety laws and regulations, usually to increase the penalty. Section 3318 of title 46, United States Code, lists the penalty amounts for various inspection violations. In H.R. 3486, the civil penalty for violating section 3318(a) is increased from \$1,000 (or, in the case of a barge, \$500) to a maximum of \$5,000 per violation. The criminal fines for boiler violations (3318 (c) and (d)) are increased from not more than \$2,000 to not more than \$5,000. The fines for criminal violations listed in 3318 (e) and (f) are increased to not more than \$10,000. A civil penalty of not more than \$5,000 is added in addition to the criminal violations in section 3318 (b) through (f). The penalties for nautical school vessel violations in section 3318(g) are decreased to not more than \$5,000 from \$10,000, and the criminal penalty is changed to a civil penalty. A violation of the notice requirement in section 2(a) of H.R. 3486 (to become section 3309(c)) or section 3318(h) of title 46 each carries a civil penalty of not more than \$1,000.

A maximum civil penalty of \$10,000 per day is imposed upon an owner, or other specified person, for operating a vessel without a current certificate of inspection, except if the vessel is less than 1,600 gross tons, in which case the maximum penalty is \$2,000 per day of violation. However, the owner will not be liable for a penalty if the owner has notified the Secretary under 3309(c) and has complied with all other directions and requirements, and if the Secretary believes that unforeseen circumstances were such that the owner was not able to obtain the scheduled inspection before the certificate of inspection expired. This subsection is narrowly drawn to apply only when unforeseen circumstances cause a situation in which it is not feasible to conduct the scheduled inspection. This subsection does not require the Secretary to make a formal finding in order to excuse the penalty; the Secretary is authorized to excuse liability for the penalty simply if the Secretary believes the unforeseen circumstances justify relief.

The Committee believes that "unforeseen circumstances" which prevent a vessel from arriving on time for a previously scheduled inspection might reasonably include particularly bad weather or,

for a vessel operating on the inland waterways, unusually congested traffic at a lock.

The Committee recognizes that special difficulties may arise in scheduling and carrying out inspections of vessels engaged in overseas petroleum exploration and recovery operations. It is anticipated that vessel owners and the Coast Guard will take into account the distances involved, the uncertainties of transportation, and the potential difficulty of obtaining drydock facilities when preparing for an inspection. Unforeseen circumstances are those which arise suddenly, or which are clearly beyond the control of the vessel owner or operator, and which make it impossible for an inspection to be carried out on time.

The civil penalties imposed under section 3318 of title 46 are maximum amounts, which can be reduced for reasons listed in section 107, Civil Penalty Procedures, of title 46. Under section 2107, the Secretary must consider the nature, circumstances, extent, and gravity of prohibited acts and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and any other matters justice requires. The Committee expects that the Secretary will consider factors such as the profits and value of the vessel, the type of cargo carried, the location of the violation, and the extent of the risk to the vessel and others around it. The Secretary may also compromise, modify, or remit a civil penalty before the assessment is referred to the Attorney General.

SECTION 3: REPORTING REQUIREMENTS

Section 3 establishes requirements for periodic reports concerning vessel status, and procedures for notifying the Coast Guard in the event that those reports are not received. The purpose of the section is to increase the likelihood that Coast Guard or other assistance will be provided in a timely and effective manner to any vessel that is in distress and that cannot—for one reason or another—successfully communicate that distress to the vessel's owner or to others in a position to provide help.

Three separate but complementary reporting or notification requirements are established.

(1) Under 46 U.S.C. 2306(b), as amended by section 3(a) of H.R. 3486, the master of any vessel required to report to USMER will be required to report to the owner of the vessel, or other specified person, at least once every 48 hours. This requirement will therefore apply to the master of any U.S. flag vessel that is engaged in foreign commerce. The maximum penalty for failure to report as required is a civil penalty of \$1,000. The Committee recognizes that there exists a possibility that the master of a vessel may attempt to report as required, but fail to have his report received because of unfavorable atmospheric conditions, or problems with his communication equipment. The Committee intends that the reporting requirement be considered to have been fulfilled whenever the master of the vessel makes a good faith effort to initiate his report, and if unsuccessful, continues at frequent intervals to attempt to contact the vessel owner.

(2) The owner, or other specified person, of any vessel required to report to USMER will be required to notify the Coast Guard imme-

diately whenever more than 48 hours have passed since the last communication with the vessel. This immediate notification shall contain all pertinent information with respect to the vessel and shall be supplemented by a written notification submitted by the owner within 24 hours. The owner shall also be required immediately to use all available means to determine the status of the vessel himself.

(3) Similar notification and status determination requirements apply with respect to the owner of any U.S. vessel who has reason to believe that the vessel may have been lost or imperiled.

The maximum penalty for failure by the owner, or other specified person, to notify the Coast Guard or to take all available steps to contact the vessel shall be \$5,000 per day of the violation.

The Committee expects that the Coast Guard will take all reasonable steps to locate, or to establish contact with, any vessel which has failed to report as required, or which is thought by the owner possibly to be lost or imperiled. A description of these steps is contained in correspondence received by the Subcommittee on Coast Guard and Navigation on September 15, 1983 from Admiral Clyde Lusk, Chief of the Coast Guard's Office of Merchant Marine Safety, in response to a question submitted concerning this matter.

This reply outlines a progressive procedure by the Coast Guard in response to a vessel's failure to report. The response would begin with an analysis of all available data and a preliminary communications search which, if unsuccessful, would be extended to include all potential sources of information including physical checking of all possible locations. The failure of these efforts would lead promptly to the dispatch of Coast Guard search and rescue units on a "distress" basis until the vessel is found or all leads to the probability of locating the vessel have been pursued.

This section does not alter the statutory authority of the Coast Guard to conduct search and rescue operations pursuant to title 14 of the United States Code, nor does it create any new responsibility, obligation, or liability on the Coast Guard to initiate a search and rescue operation.

SECTION 4: LIMITATION OF LIABILITY

Section 4 amends subsection (b) of section 4283 of the Revised Statutes of the United States (46 App. U.S.C. 183(b)) by increasing the per ton liability of a shipowner under that provision from \$60 to \$420. This provision applies only to cases involving personal injury or death as the result of an incident involving a seagoing vessel. The liability limit may be invoked by the owner of a vessel only when he is able to establish that neither he nor any of his supervisory personnel had or should have had knowledge of the cause of the incident or disaster. If the owner is unable to establish that this is the case, neither this section nor this general provision of law establishes any limit on his liability.

The Committee does not intend or expect that this section will influence judicial decisions with respect to whether privity or knowledge of the owner was involved in a maritime disaster. The amendment affects only the dollar limitation on liability, and has

no other bearing on the adjudication of a claim for compensation for injury or loss of life.

This section was approved by the Committee as an interim solution to the limitation of liability problem, pending the development of a comprehensive legislative proposal in this field.

The change made by this section will apply to all incidents occurring after the date of enactment of this Act.

SECTION 5: EFFECTIVE DATE

This section provides that sections 2(a) and 3 will become effective 180 days following the date of enactment. These sections contain the notification and reporting requirements of the Act. Section 5 will allow adequate time for both the Coast Guard and those affected by the new requirements to develop procedures for the implementation and enforcement of the new law.

COMPLIANCE WITH CLAUSE 7, RULE XIII

In accordance with paragraph (d) of this clause, the provisions of this clause do not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office has been prepared and included in the report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of Rule XI of the Rules of the House of Representatives, the Committee has assessed the potential for inflationary impact and has concluded that such impact is minimal. The notification and reporting procedures required by H.R. 3486 can be handled through existing administrative and procedural mechanisms. The provisions for increased inspection violation penalties are intended to insure compliance with the law and should not be a financial burden to the safe and prudent operator. Therefore, the net impact of H.R. 3486 on ocean transportation costs should be negligible.

COMPLIANCE WITH CLAUSE 2(1)(3), RULE XI

With respect to the requirements of clause 2(1)(3) of Rule XI of the Rules of the House of Representatives:

(A) H.R. 3486 was not initiated as the result of oversight hearings addressed to the subject matter of the bill and conducted during the present Congress.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of Rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with an estimate and comparison of costs for H.R. 3486, as reported, pursuant to section 403 of the Congressional Budget Act of 1974. The submission is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., November 8, 1983.

HON. WALTER B. JONES,
*Chairman, Committee on Merchant Marine and Fisheries, House of
Representatives, Longworth House Office Building, Washington,
D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3486, the Maritime Safety Act of 1983, as ordered reported by the House Committee on Merchant Marine and Fisheries, November 1, 1983. We expect that enactment of this bill would result in no significant cost to federal, state, or local governments. While the bill increases fines for violating several regulations, we do not expect it to result in significant additional revenues.

This bill amends provisions of the United States Code which specify inspection procedures and penalties for freight, passenger, and other types of vessels, and adds requirements for reporting missing vessels owned or operated in waters under the jurisdiction of the United States. Section 4 of the bill, which applies to all sea-going vessels, increases the limit on the owner's liability for payments involving loss of life or bodily injury from \$60 per ton of a vessel's tonnage to \$420 per ton.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director.*

DEPARTMENTAL REPORTS

No departmental reports were received.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

46 U.S.C. 2301-2305, 3309-3318, 6101-6103, 183

CHAPTER 23—OPERATION OF VESSELS GENERALLY

Sec.

2301. Application.

2302. Penalties for negligent operations.

2303. Duties related to marine casualty assistance and information.

2304. Duty to provide assistance at sea.

2305. Injunctions.

2306. *Vessel reporting requirements.*

§ 2301. Application

[This chapter] *Except as provided in section 2306 of this title, this chapter applies to a vessel operated on waters subject to the*

jurisdiction of the United States and, for a vessel owned in the United States, on the high seas.

* * * * *

§ 2305. Injunctions

(a) The district courts of the United States have jurisdiction to enjoin the negligent operation of vessels prohibited by this chapter on the petition of the attorney General for the United States Government.

(b) When practicable, the Secretary shall—

(1) give notice to any person against whom an action for injunctive relief is considered under this section an opportunity to present that person's views; and

(2) except for a knowing and willful violation, give the person a reasonable opportunity to achieve compliance.

(c) The failure to give notice and opportunity to present views under subsection (b) of this section does not preclude the court from granting appropriate relief.

306. Vessel reporting requirements

§ (a)(1) An owner, charterer, managing operator, or agent of a vessel of the United States having reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled immediately shall use all available means to determine the status of the vessel and notify the Coast Guard.

(2) When more than 48 hours have passed since the owner, charterer, managing operator, or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System under authority of section 212(A) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1122a), received a communication from the vessel, the owner, charterer, managing operator, or agent immediately shall use all available means to determine the status of the vessel and notify the Coast Guard.

(3) A person notifying the Coast Guard under paragraph (1) or (2) of this subsection shall provide the name and identification number of the vessel, the names of individuals on board, and other information that may be requested by the Coast Guard. The owner, charterer, managing operator, or agent also shall submit written confirmation to the Coast Guard within 24 hours after nonwritten notification to the Coast Guard under those paragraphs.

(4) An owner, charterer, managing operator, or agent violating this subsection is liable to the United States Government for a civil penalty of not more than \$5,000 for each day during which the violation occurs.

(b)(1) The master of a vessel of the United States required to report to the System shall report to the owner, charterer, managing operator, or agent at least once every 48 hours.

(2) A master violating this subsection is liable to the Government for a civil penalty of not more than \$1,000 for each day during which the violation occurs.

(c) The Secretary may prescribe regulations to carry out this section.

§ 3309. Certificate of inspection

(a) When an inspection under section 3307 of this title has been made and a vessel has been found to be in compliance with the requirements of law and regulations, a certificate of inspection, in a form prescribed by the Secretary, shall be issued to the vessel.

(b) The Secretary may issue a temporary certificate of inspection in place of a regular certificate of inspection issued under subsection (a) of this section.

(c) At least 30 days (but not more than 60 days) before the current certificate of inspection issued to a vessel under subsection (a) of this section expires, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel shall submit to the Secretary in writing a notice that the vessel—

(1) will be required to be inspected; or

(2) will not be operated so as to require an inspection.

* * * * *

§ 3311. Certificate of inspection required

(a) A vessel subject to inspection under this part may not be operated without having on board a [valid] certificate of inspection issued under section 3309 of this title.

(b) The Secretary may direct the owner, charterer, managing operator, agent, master, or individual in charge of a vessel subject to inspection under this chapter not having a certificate of inspection—

(1) to have the vessel proceed to mooring and remain there until a certificate of inspection is issued; or

(2) to take immediate steps necessary for the safety of the vessel, individuals on board the vessel, or the environment.

* * * * *

§ 3318. Penalties

(a) [The] *Except as otherwise provided in this part, the owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this part or a regulation prescribed under this part, and a person violating a regulation that applies to a small passenger vessel, freight vessel of less than 100 gross tons, or sailing school vessel, are liable to the United States Government for a civil penalty of [\$1,000, except that when the violation involves operation of a barge, the penalty is \$500.] not more than \$5,000.* The vessel also is liable in rem for the penalty.

(b) A person that knowingly manufactures, sells, offers for sale, or possesses with intent to sell, any equipment subject to this part, and the equipment is so defective as to be insufficient to accomplish the purpose for which it is intended, shall be fined not more than \$10,000, imprisoned for not more than 5 years, or both.

(c) A person that employs a means or device whereby a boiler may be subjected to a pressure greater than allowed by the terms of the vessel's certificate of inspection shall be fined not more than [\$2,000,] \$5,000, imprisoned for not more than 5 years, or both.

(d) A person that deranges or hinders the operation of any machinery or device employed on a vessel to denote the state of steam or water in any boiler or to give warning of approaching danger, or permits the water level of any boiler when in operation of a vessel to fall below its prescribed low-water line, shall be fined not more than **[\$2,000,] \$5,000**, imprisoned for not more than 5 years, or both.

(e) A person that alters, defaces, obliterates, removes, or destroys any plans or specifications required by and approved under a regulation prescribed under section 3306 of this title, with intent to deceive or impede any official of the United States in carrying out that official's duties, shall be fined not more than **[\$2,000,] \$10,000**, imprisoned for not more than 2 years, or both.

(f) A person shall be fined not less than \$1,000 but not more than **[\$5,000,] \$10,000**, and imprisoned for not less than 2 years but not more than 5 years, if the person—

(1) forges or counterfeits with intent to make it appear genuine any mark or stamp prescribed for material to be tested and approved under section 3306 of this title or a regulation prescribed under section 3306;

(2) knowingly uses, affixes, or causes to be used or affixed, any such forged or counterfeited mark or stamp to or on material of any description;

(3) with fraudulent intent, possesses any such mark, stamp, or other device knowing it to be forged or counterfeited; or

(4) with fraudulent intent, marks or causes to be marked with the trademark or name of another, material required to be tested and approved under section 3306 of this title or a regulation prescribed under section 3306.

(g) A person **[shall be fined not more than \$10,000, imprisoned for not more than one year, or both,]** *is liable to the Government for a civil penalty of not more than \$5,000*, if the person—

(1) interferes with the inspection of a nautical school vessel;

(2) violates a regulation prescribed for a nautical school vessel;

(3) is an owner of a nautical school vessel operated in violation of this part; or

(4) is an officer or member of the board of directors of a school, organization, association, partnership, or corporation owning a nautical school vessel operated in violation of a regulation prescribed for a nautical school vessel.

(h) An owner, charterer, managing operator, agent, master, or individual in charge of a vessel that fails to give the notice required by section 3304(b) of this title is liable to the **[United States Government for a civil penalty of not more than \$500.]** *Government for a civil penalty of not more than \$1,000*. The vessel also is liable in rem for the penalty.

(i) *A person violating section 3309(c) of this title is liable to the Government for a civil penalty of not more than \$1,000.*

(j)(1) *An owner, charterer, managing operator, agent, master, or individual in charge of a vessel required to be inspected under this chapter operating the vessel without the certificate of inspection is liable to the Government for a civil penalty of not more than \$10,000 for each day during which the violation occurs, except when*

the violation involves operation of a vessel of less than 1600 gross tons, the penalty is not more than \$2,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

(2) A person is not liable for a penalty under this subsection if—

(A) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has notified the Secretary under Section 3309(c) of this title;

(B) the owner, charterer, managing operator, agent, master, or individual in charge of the vessel has complied with all other directions and requirements for obtaining an inspection under this part; and

(C) The Secretary believes that unforeseen circumstances exist so that it is not feasible to conduct a scheduled inspection before the expiration of the certificate of inspection.

(k) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to comply with a direction issued by the Secretary under section 3311(b) of this title is liable to the Government for a civil penalty of not more than \$10,000 for each day during which the violation occurs. The vessel also is liable in rem for the penalty.

(l) A person committing an act described in subsections (b)–(f) of this section is liable to the Government for a civil penalty of not more than \$5,000. If the violation involves the operation of a vessel, the vessel also is liable in rem for the penalty.

§ 6101. Marine casualties and reporting

(a) The Secretary shall prescribe regulations on the marine casualties [and incidents] to be reported and the manner of reporting. The regulations shall require reporting the following marine casualties:

(1) death of an individual.

(2) serious injury to an individual.

(3) material loss of property.

(4) material damage affecting the seaworthiness or efficiency of the vessel.

(b) A marine casualty shall be reported within 5 days as provided in this part and regulations prescribed under this part.

[(c) When the owner, charterer, managing operator, or agent of a vessel of the United States has reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled, the owner, charterer, managing operator, or agent immediately shall attempt to determine the status of the vessel. If the owner, charterer, managing operator, or agent cannot determine the status of the vessel, the owner, charterer, managing operator, or agent immediately shall notify the Coast Guard and provide the name and identification number of the vessel, the names of individuals on board, and any other information that may be requested by the Coast Guard.]

§ 6103. Penalty

An owner, charterer, managing operator, agent, master, or individual in charge of a vessel failing to report a casualty [or incident] as required under section 6101 of this title or a regulation prescribed under section 6101 is liable to the United States Government for a civil penalty of \$1,000.

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

* * * * *

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than ["\$60"] \$420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to ["\$60"] \$420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

* * * * *

ADDITIONAL VIEWS OF HON. WALTER B. JONES

During the marine safety hearings held in consideration of H.R. 3486, the Committee became aware of a potentially serious problem regarding distress communications equipment required onboard U.S.-flag vessels. The Communications Act of 1934 (Act) requires that U.S. vessels of over 1600 gross tons and engaged in foreign commerce be capable of transmitting a clearly perceptible signal 200 miles on the 500 kHz frequency. In addition, the Safety of Life at Sea Convention of 1974 establishes 500 kHz as the international distress and calling frequency.

Recent Federal Communications Commission field tests on 500 kHz installations indicate that a majority of compulsory vessels may not meet the requirements of the Act. Specifically, out of 82 vessels tested only 5 were in compliance. The Commission has addressed this problem by issuing a final rulemaking (PR Docket No. 82-11) to require that compulsory vessels be capable of generating a specified minimum field strength at a distance of one nautical mile. Despite this positive action, I am concerned inasmuch as the rulemaking allows for a three year implementation period and permits self-certification by vessel owners.

It is apparent that the 500 kHz distress system will eventually be replaced by the Future Global Maritime Distress and Safety System, due to become operational in 1990. However, 500 kHz remains the primary distress system for merchant vessels of 1600 gross tons and over operating in foreign commerce, and its usefulness must be maintained until the future system is effectively operating. The Commission's issuance of the above mentioned final rulemaking indicates support for this conclusion.

Currently, the sample test indicates that a majority of compulsory vessels might be sailing with deficient distress installations. This is not acceptable and may constitute a serious situation with respect to the safety of U.S. merchant mariners. Therefore, I urge the Commission to fully consider the following recommendations regarding the rulemaking:

- (1) Every reasonable effort should be made to expedite the implementation period. If this matter is given a higher priority, I believe that vessels could be tested and brought into compliance in a far shorter time than 3 years.

- (2) I am concerned that if a program of self-certification is used to demonstrate that a vessel's radio installation transmits the required signal distances, the tests will lack standardization and there is a chance for operators to undertake inadequate tests and then seek Commission certification on the basis of those tests. As these installations are important to the safety of U.S. mariners, it would seem reasonable that the Commission itself should insure compliance with the statutory requirements. I would suggest that, inasmuch as the American

Bureau of Shipping is authorized to inspect radiocommunications equipment and issue SOLAS certificates to certain foreign flag vessels, the Commission could reasonably delegate to the ABS the authority to test and certify 500 kHz installations. I furthermore believe that it is time for the FCC to initiate discussions with the Coast Guard to consider coordinating radio checks with Coast Guard inspections.

Because of the extreme importance of this issue, I intend to explore different avenues which may expedite compliance with the 200 mile radio rule. I believe further action must be taken beyond the recent FCC rulemaking.

A number of other specific issues have been identified which appear to merit further consideration and analysis. Testimony presented at the maritime safety hearings brought these issues to my attention. Although H.R. 3486 was not amended to include these items, I intend to address these issues in the future and I have requested that the Coast Guard review the following recommendations:

- (1) When establishing minimum manning certificates for any vessel, the Coast Guard should take into consideration the continuous maintenance needed for the safe upkeep of a ship's superstructure, engine room machinery, firefighting equipment, lifeboats and lifeboat launching equipment. The routine maintenance and repairs needed for safe daily operation should also be considered.

- (2) The manning certificates should be adequate to ensure that the ship's complement can cope with any onboard emergency, including the safe operation of the vessel while malfunctioning automatic and remote control equipment is being repaired.

- (3) When issuing original seamen's documents, the applicant should be required to pass a psychiatric examination, which should include a check for drug addiction, alcohol addiction, and any propensity to violent behavior.

- (4) The Coast Guard should consider rulemaking that would require exposure suits be carried on all vessels operating in waters of 70 degrees Fahrenheit or less, irrespective of whether or not they carry "enclosed lifeboats." In the annual inspection a provision for inspection of all exposure suits should be included.

- (5) A formal "Safety Advisory Board" with representatives from labor, the shipping industry and the Coast Guard should be established. The responsibility of the Board should be to gather information and make recommendations designed to prevent maritime casualties and promote overall safety on board U.S. vessels.

WALTER B. JONES.

ADDITIONAL VIEWS OF HON. ROY DYSON

When the committee began deliberations on H.R. 3486, it faced serious questions about the approval and inspection of safety equipment on foreign vessels which are reflagged as U.S. vessels.

I support this bill and urge its passage by the House. Nonetheless, I continue to be concerned about whether we can allow future reflagged U.S. vessels to carry lifesaving equipment which has not been subjected to the same Coast Guard performance tests as equipment installed on other U.S. flag vessels.

In October 1981, the Coast Guard issued Navigation and Vessel Inspection Circular No. 10-81. The purpose of this NVC was to set forth in writing the procedures for Coast Guard certification and inspection of certain categories of existing vessels. For one of the categories, foreign flag vessels between two and eight years old that are brought under U.S. flag, the NVC provides that lifesaving equipment already installed need not be replaced by U.S. Coast Guard approved equipment as long as it is approved by a signatory to the Safety of Life at Sea Convention, is in good and serviceable condition, and has English language instructions. The effect of this provision is that some vessels, which are inspected and certified by the Coast Guard as U.S. flag vessels, will be carrying lifesaving equipment which has not met the more stringent Coast Guard standards of other U.S. flag vessels.

An example of this is demonstrated by what is known as the "drop test". The Coast Guard requires all lifeboats to be dropped, fully loaded, a distance of more than three meters. This test is crucial in determining whether a lifeboat is durable enough to be launched at sea. Many European nations only provide for drop tests of less than three meters and only with an unloaded lifeboat. The difference between the two can be as much as three to five times the weight. Denmark, which is a major supplier of foreign lifeboats, does not even require a drop test.

Additionally, the Coast Guard requires lifeboats to be fully loaded and swung eight feet into a solid barrier. This simulates the contact a swinging lifeboat may have with the side of a ship when launched in rough seas. Eight countries, including Denmark, do not require any swing test to be completed for certification.

Chairman Jones drafted a letter to Admiral Gracey, Commander of the U.S. Coast Guard, which was signed by members of both the Subcommittee and full committee. In part, the letter asked the Coast Guard to issue proposed regulations to require a higher standard of lifesaving equipment on all U.S. cargo vessels. I commend the Chairman on his leadership and initiative in bringing to light some of the safety issues which committee members felt did not adequately lend themselves to specific legislative action.

Because of my concern about the particular problems mentioned above, which were not included in the letter to Admiral Gracey, it is my hope that the committee will again consider these issues in the near future.

Maritime safety is a high priority of the Coast Guard. The high standards of safety developed by them should be required of all future reflagged vessels to safeguard the lives of those traveling on them. To allow these vessels to carry safety equipment which has not received rigorous performance tests will only serve to undermine the purpose of the inspection and certification process.

ROY DYSON.

